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Supreme Court, U.S.
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No. 92-1854

IN THE

Supreme Court of the United States

October Term, 1992

KATHLEEN POOLE, as Administratrix of the Estate of DAVID POOLE,

Petitioner,

vs.

CONSOLIDATED RAIL CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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33 pp

QUESTION PRESENTED

Should this Court issue a Writ of Certiorari to consider Petitioner's claim that she was deprived of due process under the Fourteenth Amendment to the United States Constitution because former New York Court of Appeals Chief Judge Sol Wachtler had an interest in the outcome of this case involving the use of surveillance films at a civil trial, based on unfounded allegations that he was taking "photographs and films of his former mistress and her current lover" during the pendency of the within appeal, where there is no evidence that any such conduct ever occurred, and where the alleged interest on the part of Judge Wachtler in the issue of surveillance presented in this appeal is remote and speculative, and where the unanimous Court of Appeals, without Judge Wachtler's participation, rejected Petitioner's motion for reargument which included that claim?

STATEMENT REQUIRED BY RULE 29.1

Kathleen Poole is the petitioner/plaintiff.

Respondent/defendant Consolidated Rail Corporation has the following subsidiaries and affiliates:

CRR Industries, Inc.
CRC Properties, Inc.
Akron & Barberton Belt RR. Co.
Pitts., Chart. & Yough. Rwy. Co.
Indiana Harbor Belt RR. Co.
Albany Port Railroad Corp.
Railroad Assoc. Insurance, Ltd.
Calumet Western Railway Co.
Lakefront Dock & RR. Term. Co.
Transportation Data Xchge., Inc.
Merchants Desp. Trans. Corp.
Mich. Fay., & Greenb. RR. Co.
Trailer Train Co.
Monongahela Railway Co.
Peoria & Pekin Union Rwy. Co.
Calpro Company
St. Lawrence & Adiron Rwy. Co.
Peoria Midwest Transp. Corp.
Railbox Company
Belt Railway Co. of Chicago
Penn Central Communications Co.
Railgon Company
Chicago & Western Indiana Rwy. Co.
CRR Credit Corp.
CRR Investments, Inc.

PD Land Services, Inc.
CG Products, Inc.
Conrail Mercury, Inc.
Concord Resources Group, Inc.
CG Lockport
CU Energy Partnership LP
General American Insurance Co.
Concord Canada, Inc.
Land Acquisition Services, Inc.
CR Quality Services, Inc.
Soretox, Inc.
NY Land Acquisition Services, Inc.
Stablex Canada, Inc.
Stablex Filtration, Inc.
Black Hawk Development, Inc.
Incinerator Proj. Joint Venture

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RULE.

New York CPLR 3101(d)(2) 10

OTHER AUTHORITY.

R. Stern, E. Gressman and S. Shapiro, Supreme Court Practice 215 (6th Edition 1986) 12

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INTRODUCTION

Petitioner asks this Court to grant *certiorari* to determine whether plaintiff was denied due process of law under the Fourteenth Amendment because former Chief Judge Wachtler participated in the appeal of Mr. Poole's case. Petitioner urges this Court to find that the standard set forth in *Aetna Life Ins. Co. v. LaVoie*, 474 U.S. 813 (1986), has been met by the alleged conduct of Judge Wachtler. Respondent respectfully submits that this Petition raises no unsettled issues of Constitutional law, nor does it present any conflict in law among the various courts. Rather, this petition does nothing more than to ask this Court to make a factual determination that Judge Wachtler had a personal interest in the outcome of this case which rose to the level enunciated in *Aetna*. No fair reading of the facts would justify such a determination.

For these reasons, the writ should not issue.

STATEMENT OF THE CASE

This action was commenced pursuant to the Federal Employers' Liability Act, 45 U.S.C. §51, *et seq.*, alleging negligence of respondent/defendant, Consolidated Rail Corporation ("Conrail") which caused injuries to its employee, David L. Poole, now deceased. Following the jury verdict of $4,152,000, Conrail appealed on several grounds. The New York Court of Appeals ultimately reversed and set aside the verdict. In its unanimous opinion, the Court of Appeals held that Conrail was deprived of a fair trial by trial tactics employed by plaintiff's counsel and certain rulings made by the trial judge. (Petitioner's Appendix B).

The New York Court of Appeals also held that it was improper for plaintiff's counsel to use surveillance films that Conrail had been ordered to disclose prior to trial, but which it never intended to use at trial. Plaintiff's counsel, without any factual basis, argued to the jury and now falsely states to this Court that the videotape showed the severity of the plaintiff's injuries and that Conrail chose not to show the film to the jury for that reason. (Petition, p.4). However, the Court also discussed other trial errors, such as the trial court's failure to allow defendant to introduce evidence of its foreman's unavailability due to recent heart surgery, and plaintiff's counsel's subsequent comments in summation that Conrail did not produce the foreman because he would not have helped Conrail's case, and the trial court's refusal to allow defendant's economist to testify as to wages plaintiff might have earned in alternative employment. The Court of Appeals determined that the error involving the trial court's refusal to allow Conrail

to explain the unavailability of its foreman was "more egregious" than the error regarding the use of surveillance. (Petitioner's Appendix at 14a-18a).

The Court of Appeals determined that "these errors permeated the trial and created a climate of hostility that effectively destroyed the defendant's ability to obtain a fair trial." (Petitioner's Appendix at 15a). Thus, even had the Court of Appeals not ruled as it did on the surveillance issue, the result for Petitioner would have been the same; that is, a new trial would have been ordered.

After publication of the New York Court of Appeals' decision, Judge Wachtler was arrested and arraigned on federal charges. Thereafter, petitioner moved the Court of Appeals for reargument on several grounds, including a claim that plaintiff was denied due process based on the participation by Judge Wachtler in the decision rendered by the unanimous court. In support of her motion for reargument, and in her petition for *certiorari*, petitioner has concocted a preposterous scenario in which she claims that Judge Wachtler had a personal interest in the outcome of the decision because he himself had taken "compromising photographs . . . of [his former paramour] with her current lover." (Petition at 5). Petitioner presented this argument in her Motion for reargument to the Court of Appeals after Judge Wachtler resigned from the Court. The Court, having full knowledge of the relevant facts and legal issues, unanimously denied the motion for reargument and awarded costs to Conrail.

Thereafter, Judge Wachtler entered into a plea agreement in which he pled guilty to one count of making an interstate kidnapping threat. Contrary to the

assertion set forth by petitioner in her Statement of the Case (Petition at 5), Judge Wachtler did not acknowledge the accuracy of the entire indictment, but simply acknowledged that he engaged in certain acts set forth in the Information. (Petitioner's Appendix G, 69a). In Judge Wachtler's statement to the court upon taking his plea he stated that in the guise of a fictitious private investigator whom he named David Purdy, he sent letters and cards to Ms. Silverman in order to "try to better convince Ms. Silverman that there really was a Purdy and he had compromising pictures." (Petitioner's Appendix at 70a). He further stated that "the extreme nature of these threats were meant to cause Ms. Silverman to believe that in fact there was someone named Purdy. . . ." (Petitioner's Appendix at 71a). Judge Wachtler also indicated that no pictures existed when he stated that "I began escalating the activity eventually demanding $20,000 for the *supposedly* compromising pictures. . . ." (Emphasis supplied). (Petitioner's Appendix at 70a). There is nothing in either the indictment or the plea agreement to substantiate the unfounded accusations set out in the Petition.

REASONS FOR DENYING THE WRIT

POINT ONE

JUDGE WACHTLER HAD NO PERSONAL INTEREST IN THE OUTCOME OF THIS CASE

A. Judge Wachtler Did Not Have A "Direct, Personal, Substantial And Pecuniary Interest" In The Outcome Of This Case.

Plaintiff's sole legal basis for relief is this Court's decision in *Aetna, supra* which held that due process rights may be violated when a member of the judiciary deciding a case has an interest in the outcome of the case which is "direct, personal, substantial, [and] pecuniary." 474 U.S. at 824. In *Aetna*, the plaintiffs brought an action against their health insurer charging it with bad faith refusal to pay a claim. The action sought both compensatory and punitive damages. The jury found in favor of the plaintiffs, and the defendant appealed on the grounds that the verdict could not stand under then existing Alabama law. At the time the case came before the Supreme Court of Alabama, one of its justices, Justice Embry, had two actions pending in an Alabama court against insurance companies alleging bad faith failure to pay claims and seeking punitive damages. Justice Embry not only participated in the decision of the Alabama Supreme Court but cast the deciding vote, which made new law in Alabama and held in favor of the plaintiffs. As this Court concluded in *Aetna*, his opinion "had the clear and immediate effect of enhancing both the legal status and the settlement value of his own case." *Id.* at 824.

No such facts or circumstance exist here. Rather, Petitioner's claim requires the following series of assumption and speculation:

—Judge Wachtler obtained films or photographs of Ms. Silverman, where there is no evidence of that.

—Judge Wachtler, against whom no action—civil or criminal—was pending at the time of the Court of Appeals' decision, knew it would be determined that he was behind the threats to Ms. Silverman, and that felony charges against him would result.

—The decision below regarding the use of impeachment evidence obtained by a party as material prepared for litigation would be of personal use to Judge Wachtler in future legal proceedings.

—Judge Wachtler knew that, in the event he was later arrested and in the event a plea bargain would be attempted, he would have an interest in obtaining a plea to a non-extortion charge, and the holding of this case would be of assistance to him in obtaining such a plea.

—Judge Wachtler, at the time this case was being decided, "realized or should have realized . . . his lawyers . . . may be obligated to cite the Court of Appeals' decision in the case at bar [Poole] in an attempt to at least mitigate the egregious nature of his acts or the magnitude of his crime." (Petition at 16).

—Judge Wachtler thought that he might some day be sued by Ms. Silverman for "punitive damages based upon a cause of action for intentional infliction of mental and emotional distress, arising out of a deliberate and malicious campaign of harassment and intimidation" (Petition at 16, 17), and he might want to frame the decision so that he could use it to his benefit in some undefined way.

—In defending such a potential claim, "whether or not Wachtler intended to use his surveillance materials would be an important issue in the determination of his motives." (Petition at 17).

—In further defending such potential and unasserted claim, "Judge Wachtler would be expected to argue that he had no . . . evil or reprehensible motives, but rather the degree his guilt [sic] was mitigated because his ultimate aim was not the extortion of money from 'J.S.', but the resumption of his relationship with her. . ." (Petition at 17) and that he would somehow position himself to use the decision in this case to assist him in that regard.

—Assuming all of the foregoing, Judge Wachtler would then be in a position to use the decision in this case to argue that films or photographs which he had gathered were inadmissible and that no mention could be made concerning them at trial because he had no intent to use them.

It is obvious that the alleged interest of Judge Wachtler in the outcome of this case does not rise to the level of a "direct, personal, substantial [and] pecuniary" interest as was required and found to exist by this Court in *Aetna* with regard to Justice Embry. Indeed, the alleged interest of Judge Wachtler in this decision does not even compare to the interest of the remaining justices in *Aetna* who were potential members of a class action which had not yet been certified. The interest of those justices was held by this Court to be so "speculative and contingent" as not to raise a constitutional disqualification argument. *Id.* at 826.

This Court further held in *Aetna* that "the application of the constitutional requirement of disqualification must be carefully limited", and that "[c]harges of disqualification should not be made lightly." *Id.* at 826-27. Moreover, in *Tumey v. Ohio,* 273 U.S. 510, 531 (1927) this Court held that disqualification is not warranted in cases where the "interest is so remote, trifling and insignificant that it may fairly be supposed to be

incapable of affecting the judgment of or of influencing the conduct of an individual." In *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980), this Court determined that at some point, "the biasing influence . . . [will be] too remote and insubstantial to violate the constitutional constraints." Clearly, that point was reached in this case.

This Court also found in *Aetna* that Justice Embry's "vote was decisive in the 5-to-4 decision." 474 U.S. at 828. In contrast, while Judge Wachtler wrote the opinion, the decision of the New York Court of Appeals in this case was unanimous, and there is no reason to believe that the Court's decision would be any different upon further consideration by that Court.

B. There Were No Surveillance Materials At Issue In The Wachtler Case.

Petitioner's argument assumes that surveillance materials were used or gathered by Judge Wachtler, but there is no evidence that any such materials existed. The only evidence in the Wachtler record points to the conclusion that such materials did not exist. The criminal indictment of Judge Wachtler set forth five counts and enumerated forty-four "Acts in Furtherance of the Extortion Scheme" (RA4-10). Nowhere within these forty-four enumerated acts is there any allegation of the actual use or existence of films or photographs.

On March 31, 1993, Judge Wachtler entered a guilty plea to the charge of violation of 18 U.S.C. §875(c). In that connection, he gave a detailed statement in which he outlined his actions which led to the criminal charges. Nowhere in such statement did Judge Wachtler indicate that any films or photographs were ever obtained or commissioned by him. (Petitioner's Appendix 62a-73a).

In fact, the only references to such materials indicate that he had threatened the use of fictitious materials to scare Ms. Silverman, but such materials never existed. (See Statement of Case).

C. The Evidence At Issue Does Not Relate To The Evidence That May Be At Issue In Proceedings Involving Judge Wachtler.

Even if one were to assume that Judge Wachtler actually took films or photographs of Ms. Silverman, Petitioner's argument fails to acknowledge the fundamental difference between any such material and the type of evidence at issue in *Poole*. In *Poole*, the Court of Appeals discussed the use at trial of surveillance materials which constituted *impeachment material prepared for litigation* by a defendant in a civil personal injury suit. In contrast, any evidence of films or photographs obtained by Judge Wachtler would be used not as impeachment evidence, but rather as evidence of a material element of the crime or tort itself. In the context of a subsequent criminal or civil prosecution, such films or photographs would not constitute material prepared for litigation, since they would not have been obtained to test a plaintiff's credibility or to rebut his claims regarding his physical abilities, but rather would have been created in furtherance of the crime or tort of which Judge Wachtler would have been accused.

Petitioner argues that in fashioning the rule regarding the use of surveillance materials at a civil personal injury trial, Judge Wachtler was carving out a rule which he felt would be of some possible benefit to him in an entirely different legal realm and under completely different rules of evidence. There is simply no basis for such a contention.

D. The "New Law" Made By The Court Of Appeals In This Case Does Not Support Certiorari.

Petitioner argues that because the Court of Appeals "made new law" in its decision, the decision "creates the appearance that Chief Judge Wachtler's own interest in the issue may have had an effect on the deliberations and decision of the Court of Appeals." Petition at 19. However, Petitioner acknowledges that the issue of the use of surveillance materials at trial by a party other than the party which obtained those materials was an issue of first impression for the Court of Appeals and thus it had no choice but to make new law, either in favor of its use or against such use.

In ruling on this issue, the Court of Appeals attempted to balance competing interests and to fashion a rule that protected the rights of both plaintiff and defendant, to the detriment of neither. The Court recognized that the films constitute material prepared for litigation and were entitled to a qualified privilege under New York CPLR 3101(d)(2), but nevertheless held that a plaintiff may discover any such materials which a defendant intends to use at trial. (Petitioner's Appendix, 13a-14a). Thus, Petitioner's decedent was victorious in convincing the Court of Appeals to hold that such films are discoverable in New York.

The second issue regarding surveillance presented to the Court of Appeals concerned the use a plaintiff could make of such discovered surveillance materials if the defendant elected not to use them at trial. Plaintiff's counsel attempted to show one of the films to the jury, extensively questioned witnesses as to the existence and contents of the surveillance films, and in his closing argument asserted that Conrail did not show the

surveillance films because they would not have helped its case and accused Conrail of engaging in "unAmerican" activities.

In addressing this use by plaintiff of defendant's material prepared for litigation, the Court of Appeals held that it was "troubled by these tactics because they unravel the careful compromise we have crafted today." (Petitioner's Appendix, 15a). The Court held that its ruling regarding discovery of surveillance materials by plaintiff was an attempt "to reconcile defendant's interests in keeping matter prepared in anticipation of litigation private with plaintiff's need to authenticate easily distorted visual evidence." *Id.* The Court determined that plaintiff's counsel's tactics used the spirit of openness and liberality in discovery "as a cover for tactics that effectively undermined the ultimate fairness of the trial." (Petitioner's Appendix, 16a). Thus, the unanimous Court determined that "to permit the plaintiff to profit from his knowledge of the content and existence of such tapes in this manner would enable him, by virtue of open pre-trial disclosure, to engage in the sort of gamesmanship that we are seeking to discourage in the defendant." *Id.*

Thus, unlike the situation in *Aetna, supra,* the unanimous Court of Appeals fashioned a rule which attempted to balance competing interests in a fair and equitable manner. Moreover, if Judge Wachtler was truly motivated by self-interest, the logical course would have been to rule that surveillance materials were not discoverable at all by the non-obtaining party, rather than to merely limit their use at trial.

POINT TWO

THIS FACT-INTENSIVE CASE DOES NOT RAISE DUE PROCESS ISSUES AND IS NOT APPROPRIATE FOR A WRIT OF CERTIORARI

The Petition for Writ of Certiorari does not meet established standards for the issuance of a writ. In evaluating a petition for *certiorari*, this Court has been guided by whether the petition raises unsettled and important issues of constitutional law, a conflict among the lower courts or a unique legal issue. R. Stern, E. Gressman and S. Shapiro, *Supreme Court Practice* 215 (6th Edition 1986). This Court typically avoids petitions which do nothing more than seek an analysis of the particular facts involved. Thus, in *United States v. Johnston*, 268 U.S. 220, 227 (1925) this Court held that "[w]e do not grant a certiorari to review evidence and discuss specific facts." Further, in *NLRB v. Hendricks County Rural Electric Membership Corp. et al.*, 454 U.S. 170, 176 n.8 (1981), this Court determined that there was an improvident grant of a cross-petition that primarily presented a question of fact, "which does not merit Court review." In considering a petition for certiorari, "this Court seldom takes a case merely to reaffirm settled law." *Estelle v. Gamble*, 429 U.S. 97, 115 (1976) (dissent).

Petitioner here seeks at most to apply the well-settled standard of *Aetna v. LaVoie, supra*, to the facts of this case. This case presents no novel issues or questions of law, and there is no split among the lower courts on any question. Nor does this case present an opportunity for this Court to determine any unsettled or important constitutional issues. Rather, Petitioner is simply displeased that the New York Court of Appeals, upon application for reargument after Judge Wachtler resigned, rejected her due process claim and she now seeks to have this Court substitute its application of the *Aetna* standard to the facts for that of the New York Court of Appeals.

CONCLUSION

For all of these reasons, the Petition for Certiorari of Kathleen Poole, as Administratrix of the Estate of David Poole, should be, in all respects, denied.

Dated: June 17, 1993

Respectfully submitted,

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RESPONDENT'S APPENDIX

Indictment in United States District Court District of New Jersey, Filed February 1, 1993

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Criminal No. 93-58 (AEJ)

Title 18, United States Code,
Sections 1952, 1001, 876 and 2;

UNITED STATES OF AMERICA,

v.

SOL WACHTLER.

INDICTMENT

The United States Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

COUNT ONE

(Interstate Travel in Aid of Racketeering/Extortion)

At all times relevant to this Indictment:

1. The defendant SOL WACHTLER was the Chief Judge of the New York State Court of Appeals. As such, WACHTLER was the highest ranking judicial official in the State of New York and was responsible for administering and supervising the operation of the state court system. WACHTLER maintained residences in Manhasset, New York; East Greenbush, New York; and New York City, New York.

2. Joy Silverman maintained residences in New York City, New York and Southampton, New York.

3. Jeffrey Silverman was the husband of Joy Silverman and maintained both a residence and a business office in New York City, New York.

4. David Samson was an attorney admitted to practice in the States of New Jersey and New York and a partner of the law firm of Wolff and Samson in Roseland, New Jersey.

5. Elaine Samson was the wife of David Samson. She maintained a residence in Short Hills, New Jersey.

6. On or about and between September, 1991 and November 7, 1992, in the District of New Jersey, and elsewhere, defendant

SOL WACHTLER

knowingly and wilfully traveled in interstate commerce and utilized the United States mails and interstate facilities, including interstate telephone facilities as specified below in paragraphs 12(h-i); 12(aa); 12(dd-ff); 12(kk); and 12(pp), with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, to wit: extortion, in violation of the laws of the United States and the State of New Jersey and thereafter performed and attempted to perform acts in furtherance of the aforesaid extortion as specified below in paragraph 12.

The Extortion Scheme

7. It was a part of defendant SOL WACHTLER's scheme to extort Joy Silverman that he would use his power, influence and resources as Chief Judge of the New York State Court of Appeals to obtain information to facilitate and promote the extortion scheme.

8. It was further a part of defendant SOL WACHTLER's scheme to extort Joy Silverman that he would direct employees of the New York State court system, including personnel of the New York State Court of Appeals; the Appellate Division, Third Department; and the New York State Office of Court Administration and members of his staff, to assist him in obtaining information, including confidential information, which he used to promote the extortion scheme.

9. It was further a part of defendant SOL WACHTLER's scheme to extort Joy Silverman that he would travel in interstate commerce in his personel capacity and in his capacity as Chief Judge to various locations, including Newark, Elizabeth and Linden, New Jersey; Louisville, Kentucky; Reno, Nevada; and Alexandria, Virginia, from which he would place threatening telephone calls and mail threatening communications in an effort to promote and conceal the extortion scheme.

10. It was further a part of defendant SOL WACHTLER's scheme to extort Joy Silverman that he would pose as a fictitous private investigator from Houston, Texas named "David Purdy" and make threatening telephone calls in which he disguised and electronically altered his voice, and would send and deliver threatening communications while posing as David Purdy in an effort to conceal and promote the extortion scheme.

11. It was further part of defendant SOL WACHTLER's scheme to extort Joy Silverman that he would pose as other fictitious and real persons in order to place calls and mail threatening communications in an effort to conceal and promote the extortion scheme.

Acts in Furtherance of the Extortion Scheme

12. In furtherance of his scheme to extort Joy Silverman, defendant SOL WACHTLER performed and attempted to perform the following acts, among others:

a. Beginning in October, 1991, and continuing until November 1992, defendant SOL WACHTLER made numerous telephone calls to Joy Silverman at her New York City and Southampton residences in which he hung up the telephone after the calls were answered;

b. On or about October 17, 1991, defendant SOL WACHTLER caused an employee of the New York State Office of Court Administration in New York City, New York, to perform research relating to David Samson and provide that research, via telefax, to WACHTLER in Albany, New York;

c. On or about October 17, 1991, defendant SOL WACHTLER caused an employee of the New York State Court of Appeals to perform research, including a search of the news database NEXIS, relating to David Samson and provide the results of that research to WACHTLER;

d. On or about October 18, 19, 20, 21 and 22, 1991, defendant SOL WACHTLER placed telephone calls to the Wolff and Samson law firm in Roseland New Jersey;

e. On or about October 20, 21 and 22, 1991, defendant SOL WACHTLER placed telephone calls from New York to Elaine Samson in Jew Jersey;

f. In or about October, 1991, and thereafter, defendant SOL WACHTLER caused employees of the New York State Court of Appeals to create and maintain a file on David Samson in his chambers in Mineola;

g. On or about October 28, 1991, defendant SOL WACHTLER, posing as "David Purdy," placed a telephone call from his mobile telephone to Jeffrey Silverman in which he stated that he had been hired to investigate David Samson and Joy Silverman;

h. On or about November 5, 1991, defendant SOL WACHTLER, posing as "David Purdy," placed a telephone call from his home in Manhasset, New York to Elaine Samson in New Jersey in which he offered to provide information on David Samson and Joy Silverman;

i. On or about November 6, 1991, defendant SOL WACHTLER, posing as "David Purdy," placed a telephone call from his home in Manhasset, New York to Elaine Samson in New Jersey in which he provided information on David Samson and Joy Silverman;

j. On or about November 9, 1991, defendant SOL WACHTLER placed a telephone call from Chicago, Illinois to Elaine Samson in New Jersey;

k. On or about November 8, 10, 11, 23 and 24, 1991, defendant SOL WACHTLER placed telephone calls from New York to Elaine Samson in New Jersey;

l. On or about November 29, 1991, defendant SOL WACHTLER, posing as "David Purdy," placed a telephone call from North Dade, Florida to Elaine Samson in New Jersey in which he offered to sell her pictures and tapes of David Samson and Joy Silverman;

m. On or about January 8, 1992, defendant SOL WACHTLER caused an employee of the New York State Court of Appeals to perform research, including a search of the news database NEXIS, relating to David Samson and provide the results of that research to WACHTLER;

n. On or about February 10, 1992, defendant SOL WACHTLER caused a card to be mailed from New York to Elaine Samson in New Jersey;

o. On or about March 23, 1992, defendant SOL WACHTLER caused a card to be mailed from New York to Elaine Samson in New Jersey;

p. On or about March 30, 1992, defendant SOL WACHTLER caused a card to be mailed from New York to Elaine Samson in New Jersey;

q. On or about April 2, 1992, defendant SOL WACHTLER caused a card to be mailed from New York to Elaine Samson in New Jersey;

r. On or about April 2, 1992, defendant SOL WACHTLER, placed a telephone call from his residence in New York City, New York to a woman hereinafter referred to as "Jane Doe", at her residence in Linden, New Jersey;

s. On or about April 3, 1992, defendant SOL WACHTLER, posing as "Jane Doe's" husband, placed a telephone call from his mobile telephone to David Samson at his office in Roseland, New Jersey;

t. On or about April 6, 1992, defendant SOL WACHTLER placed a telephone call from his residence in New York City, New York to "Jane Doe" in Linden, New Jersey;

u. On or about April 10, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a card to be mailed from New Jersey to Joy Silverman in New York;

v. On or about April 15, 1992, defendant SOL WACHTLER, posing as David Samson, placed a call from New York City to "Jane Doe" in Linden, New Jersey;

w. On or about April 23, 1992, defendant SOL WACHTLER, posing as David Samson, placed a call from Valley Stream, New York to "Jane Doe" in Linden, New Jersey;

x. On or about April 27, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused cards to be mailed from North Jersey to Joy Silverman and to her minor daughter in New York;

y. On or about May 2, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a card to be mailed from North Jersey to Joy Silverman in New York;

z. On or about May 4, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a card to be mailed from North Jersey to Joy Silverman in New York;

aa. On or about May 11, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a card containing a condom to be mailed from Newark, New Jersey to Joy Silverman's minor daughter in New York;

bb. On or about May 22, 1992, defendant SOL WACHTLER caused a letter to be mailed from Mineola, New York, to the Presiding Justice of the New York

Appellate Division, Third Department, in Albany, New York, in which he requested a copy of the confidential New York State Bar admissions file of David Samson;

cc. On or about May 27, 1992 the defendant, SOL WACHTLER, caused a certified copy of the confidential New York State Bar admissions records of David Samson to be provided to him under seal;

dd. On or about June 2, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a letter to be mailed from Newark, New Jersey to Joy Silverman's daughter in New York;

ee. On or about June 16, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a letter to be mailed from Elizabeth, New Jersey to Joy Silverman in New York City containing extortionate threats;

ff. On or about June 24, 1992, defendant SOL WACHTLER traveled from Virginia to New Jersey and caused three letters to be mailed from Elizabeth, New Jersey: the first was addressed to the United States Attorney for the District of New Jersey, in which he provided false and misleading information relating to a pending investigation in that office; the second was addressed to the Prosecutor of Morris County, New Jersey, in which he provided false and misleading information relating to a pending investigation in that office; the third was addressed to Joy Silverman in New York City;

gg. On or about July 1, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a letter to be mailed from Elizabeth, New Jersey to Joy Silverman in New York;

hh. On or about July 6, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a letter to be mailed from Elizabeth, New Jersey to Joy Silverman in New York;

ii. On or about July 17, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a letter to be mailed from Elizabeth, New Jersey to Joy Silverman in New York;

jj. On or about July 27, 1992, defendant SOL WACHTLER traveled from New York to New Jersey and caused a letter to be mailed from Newark, New Jersey to Joy Silverman in New York;

kk. On or about July 29, 1992, defendant SOL WACHTLER posing as "David Purdy," caused a letter containing threats to be mailed from San Antonio, Texas to Elaine Samson in New Jersey;

ll. On or about October 3, 1992, defendant SOL WACHTLER placed a call from his mobile telephone to Joy Silverman in New York City;

mm. On or about October 9, 1992, defendant SOL WACHTLER, posing as "David Purdy," placed a telephone call from Reno, Nevada to Joy Silverman in which he made extortionate threats, to wit: that he would kidnap Joy Silverman's daughter and circulate compromising photographs unless Joy Silverman paid him $20,000;

nn. On or about October 13, 1992, defendant SOL WACHTLER, posing as "David Purdy," caused a letter to be mailed from San Antonio, Texas to Joy Silverman in New York in which he made extortionate threats and gave directions as to the manner in which Joy Silverman was to deliver $20,000 to him;

oo. On or about November 3, 1992, defendant SOL WACHTLER, posing as "David Purdy," placed a telephone call from Louisville, Kentucky to Joy Silverman in which he made extortionate threats;

pp. On or about November 6, 1992, defendant SOL WACHTLER, posing as "David Purdy," placed two telephone calls from his residence in East Greenbush, New York, to Elaine Samson in New Jersey in which he offered to provide information relating to David Samson and Joy Silverman;

qq. On November 7, 1992 the defendant, SOL WACHTLER, caused Joy Silverman to deliver $20,000 in cash to the vicinity of 128 East 84th Street in New York City;

rr. On November 7, 1992 the defendant SOL WACHTLER posing as David Purdy, caused a letter to be delivered to Joy Silverman in which he made extortionate threats.

All in violation of Title 18, United States Code, Sections 1952 and 2,

COUNT TWO

(Mailing Threatening Communications)

On or about and between May 11, 1992 and June 2, 1992, in the District of New Jersey, and elsewhere, the defendant

SOL WACHTLER

knowingly and wilfully deposited and caused to be deposited in an authorized depository for mail matter and caused to be delivered by the Postal Service according to the direction thereon, two communications

addressed to another person, to wit: the minor daughter of Joy Silverman and containing threats to injure the reputation of another.

In violation of Title 18, United States Code, Sections 876 and 2.

COUNT THREE

(Mailing Threatening Communications)

On or about June 16, 1992, in the District of New Jersey, and elsewhere, the defendant

SOL WACHTLER

knowingly and willfully deposited and caused to be deposited in an authorized depository for mail matter and caused to be delivered by the Postal Service according to the direction thereon, a communication addressed to another person, to wit: Joy Silverman and containing threats to injure the reputation of the addressee and another.

In violation of Title 18, United States Code, Sections 876 and 2.

COUNT FOUR

(Mailing Threatening Communications)

On or about July 29, 1992, in the District of New Jersey, and elsewhere, the defendant

SOL WACHTLER

knowingly and willfully deposited in an authorized depository for mail matter and caused to be delivered by the Postal Service according to the direction thereon, communications addressed to another person, to wit: Elaine Samson, and containing threats to injure the reputation of the addressee and another.

In violation of Title 18, United States Code, Sections 876 and 2.

COUNT FIVE

(False Statement to Government Agency)

1. In or about and between April 1992 and September 1992, the United States Department of Justice through the Federal Bureau of Investigation and the United States Attorney's Office for the District of New Jersey was conducting an investigation of the kidnapping and murder of Sidney J. Reso, formerly an executive with Exxon Corporation (the "Reso Investigation").

2. This investigation was a "matter within the jurisdiction" of the Department of Justice, the Federal Bureau of Investigation and the United States Attorney's Office for the District of New Jersey within the meaning of Title 18, United States Code, Section 1001.

3. On or about April 29, 1992, Sidney J. Reso was abducted from the vicinity of his home in Morris Township, New Jersey.

4. On or about June 19, 1992, Arthur D. Seale and his wife Irene Seale were arrested by the Federal Bureau of Investigation and charged in United States District Court in New Jersey with kidnapping and extortion in connection with the abduction of Sidney J. Reso.

5. On or about June 24, 1992, in the District of New Jersey, and elsewhere, defendant

SOL WACHTLER

did knowingly and willfully make a false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of a department of the United States in that he caused a letter to be mailed from Elizabeth, New Jersey to the United States Attorney for the District of New Jersey in Newark in which he made false, fictitious and fraudulent statements relating to the Reso Investigation including the following statements:

a. Arthur and Irene Seale were in the process of a blackmail scheme effecting Mr. David Samson . . . and Mrs. Joy Silverman

b. The Seales have pictures and audio tapes of David Samson and Joy Silverman and have been threatening Mrs. Silverman and her daughter to extort a payoff.

In violation of Title 18, United States Code, Sections 1001 and 2.

A TRUE BILL:

LILLIAN COOK
FOREPERSON

MICHAEL CHERTOFF
MICHAEL CHERTOFF
United States Attorney